



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO JLE HOLDINGS LLC

FOR UNPERMITTED LAND-DISTURBING ACTIVITY IN SCOTT COUNTY, VIRGINIA

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and JLE Holdings LLC regarding property located NNE of the intersection of Virginia State Routes 71 and 619 in Scott County, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2009 Permit" means the General Permit for Discharges of Stormwater from Construction Activities, No. VAR10, which was promulgated at 4 VAC 50-60-1170 and subsequently transferred to 9 VAC 25-880-70, issued under the Stormwater Management Act, the VSMP Regulations, and the General Permit Regulation on July 1, 2009 and which expired on June 30, 2014.
2. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7,

4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
10. "JLE" means JLE Holdings LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. JLE is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... ." 9 VAC 25-870-10.

15. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
16. "Registration Statement" means a registration statement for coverage under the 2009 Permit or 2014 Permit.
17. "Site" means the property owned by JLE located NNE of the intersection of Virginia State Routes 71 and 619 in Scott County, Virginia, positioned at approximate latitude 36° 39' 00"N and longitude 82° 34' 02"W.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-870-10.
20. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15;24.
21. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of Stormwater Pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
22. "Surface waters" means the same as defined in 9 VAC 25-870-10.
23. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.
27. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Virginia Stormwater Management Act, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and associated regulations. Va. Code § 62.1-44.15:24.
28. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
29. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. JLE operates the Site located in Scott County, Virginia, which discharges stormwater associated with construction activity. JLE owned the Site from 2012 until November 2015.
2. DEQ is the VSMP authority for Scott County, Virginia.
3. JLE submitted two applications for coverage under the 2009 Permit, which were received by DEQ on December 31, 2013 and February 24, 2014. However, DEQ did not issue 2009 Permit coverage for the Site because JLE did not include a complete Registration Statement in its applications.
4. The Scott County Soil and Water Conservation District ("SWCD") approved an Erosion and Sediment Control ("ESC") Plan for the Site, dated December 6, 2013.
5. During DEQ inspections of the Site on July 28, 2015 and August 7, 2015, DEQ staff documented that land-disturbing activities greater than one acre had occurred at the Site

in areas subject to stormwater runoff. During the inspection on August 7, 2015, DEQ staff documented discharges of sediment-laden stormwater from the land-disturbing activities at the Site into Pike Branch and an unnamed tributary (both of which are surface waters draining into Big Moccasin Creek in the North Fork Holston River Basin). At the time of the July 28, 2015 and August 7, 2015 inspections, JLE had not submitted a registration statement for coverage under the 2014 Permit, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site.

Va. Code § 62.1-44.5(A) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . [d]ischarge stormwater into state waters from . . . land disturbing activities."

9 VAC 25-870-310(A) states: "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from . . . land-disturbing activities."

Va. Code § 62.1-44.15:34(A) states: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

6. During DEQ inspections of the Site on July 28, 2015 and August 7, 2015, DEQ staff documented that no sediment trapping controls were in place in areas where upslope land disturbance had occurred at the Site. This was inconsistent with the ESC Plan for the Site, which provides for installation of sediment trapping controls at the Site.

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9 VAC 25-870-95(L) states: "Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.

9 VAC 25-840-40(4), of the Virginia Erosion and Sediment Control Regulations, requires measures intended to trap sediment to be constructed as a first step in any land-disturbing activity and made functional prior to upslope land disturbance.

7. During the DEQ inspection of the Site on July 28, 2015, DEQ staff documented rill and gully erosion on cut and fill slopes at the Site due to uncontained concentrated runoff.

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9 VAC 25-870-95(L) states: "Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.

9 VAC 25-840-40(8), of the Virginia Erosion and Sediment Control Regulations, states: "Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure."

8. During the DEQ inspection of the Site on July 28, 2015, DEQ staff documented that several areas of the Site had not been stabilized in accordance with the ESC Plan. Several denuded areas had been dormant longer than regulatory timeframes required for stabilization based on the establishment of weeds through natural propagation.

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9 VAC 25-870-95(L) states: "Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.

9VAC25-840-40(1), of the Virginia Erosion and Sediment Control Regulations, states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."

9. Based on the results of the DEQ Site inspections on July 28, 2015 and August 7, 2015, the Board concludes that JLE violated Va. Code §§ 62.1-44.5 and 62.1-44.15:34, 9 VAC 25-870-54, 9 VAC 25-870-95, 9 VAC 25-870-310, and 9 VAC 25-840-40, as described in paragraphs C(5)-(8) of this Order.
10. On August 13, 2015, DEQ issued NOV No. 003-0815-SC for the violations noted above.
11. On September 15, 2015, Department staff met with representatives of JLE to discuss the violations.
12. In order for JLE to return to compliance, DEQ staff and JLE have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48 the Board orders JLE Holdings LLC, and JLE Holdings LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a total civil charge of \$7,500 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
November 9, 2016	\$2,500 or balance
May 9, 2017	\$2,500 or balance
November 9, 2017	\$2,500 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by JLE. Within 15 days of receipt of such letter, JLE shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

5. JLE Holdings LLC shall include its Federal Employer Identification Number (46 - 2208849) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, JLE Holdings LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of JLE for good cause shown by JLE, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 003-0815-SC dated August 13, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, JLE admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. JLE consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. JLE declares it has received fair and due process under the Administrative Process Act and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by JLE to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. JLE shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. JLE shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. JLE shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will

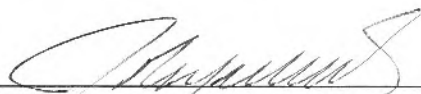
result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and JLE. Nevertheless, JLE agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after JLE has completed all of the requirements of the Order;
 - b. JLE petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to JLE.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve JLE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by JLE and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of JLE certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind JLE to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of JLE.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, JLE voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10 day of October, 2016.



Jefferson Reynolds, Director of Enforcement
Department of Environmental Quality

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JLE Holdings LLC voluntarily agrees to the issuance of this Order.

Date: 8/8/2016 By: [Signature], operation
(Person) (Title)
JLE Holdings LLC

Commonwealth of Virginia
City/County of Washington

The foregoing document was signed and acknowledged before me this 9 day of
August, 2015, by James W. Summers who is
operation ²⁰¹⁶ of JLE Holdings LLC on behalf of the company.

[Signature]
Notary Public

7522856
Registration No.

My commission expires: 8/31/2016

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Unpermitted Land-Disturbing Activities

- a. Immediately upon execution of this Order, JLE shall cease all land-disturbing activities at the Site until 2014 Permit coverage has been obtained for discharges of stormwater from construction activities. However, this requirement shall not apply to land-disturbing activities necessary for corrective measures required by this Order or the Virginia Erosion and Sediment Control Law and Regulations.
- b. Within thirty days of the effective date of this Order, JLE shall submit a complete application, including a complete and accurate registration statement, to DEQ for coverage under the 2014 Permit for discharge of stormwater from land-disturbing activities at the Site.

2. Stormwater Management Plan

- a. Within thirty days of the effective date of this Order, JLE shall submit to DEQ, for review and approval, a stormwater management plan for the Site consistent with the requirements of the VSMP Regulations.
- b. JLE shall respond to any comments from DEQ regarding the stormwater management plan within twenty-one days from the date of the comments.
- c. JLE shall install any permanent stormwater management facilities in accordance with the specifications in the approved stormwater management plan within thirty days of approval of the stormwater management plan.

3. Erosion and Sediment Control Plan

- a. Within thirty days of the effective date of this Order, JLE shall submit to both DEQ and Scott County, for their review and approval, a revised ESC Plan for the Site that addresses current conditions at the Site. The revised ESC Plan shall be consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, including the minimum standards set forth in 9 VAC 25-840-40. The revised ESC Plan shall provide for:
 - i) Installation and maintenance of functional sediment trapping controls, consistent with the specifications in the Virginia Erosion and Sediment Control Handbook, Third Edition, to remove sediment from stormwater runoff from disturbed areas throughout the Site,
 - ii) Elimination of concentrated flows down cut and fill slopes at the Site, or installation and maintenance of adequate temporary or permanent slope conveyances, consistent

- with the specifications in the Virginia Erosion and Sediment Control Handbook, Third Edition, to convey any concentrated flows down cut and fill slopes, and
- iii) Application of temporary or permanent soil stabilization within seven days to all denuded areas at the Site that will remain dormant for longer than fourteen days, and achievement of all such temporary or permanent soil stabilization within thirty days.
- b. JLE shall respond to any comments from DEQ and/or Scott County regarding the revised ESC Plan within twenty-one days from the date of the comments.
- c. Upon approval by both DEQ and Scott County, JLE shall immediately implement the approved revised ESC Plan.

4. **Erosion and Sediment Controls**

- a. Within thirty days of approval of the revised ESC Plan, JLE shall repair all areas of rill and gully erosion throughout the Site.
- b. Within seven days of the achieving final grade on any portion of the Site, apply temporary or permanent soil stabilization to all denuded areas at the Site that are at final grade, in accordance with the approved revised ESC Plan and 9 VAC 25-840-40(1).
- c. Within seven days of approval of the revised ESC Plan, install functional sediment trapping controls to remove sediment from stormwater runoff from disturbed areas throughout the Site, consistent with the approved revised ESC Plan, 9 VAC 25-840-40(4), and the specifications in the Virginia Erosion and Sediment Control Handbook, Third Edition, and
- d. Within thirty days of approval of the revised ESC Plan, eliminate concentrated flows down cut and fill slopes at the Site, or install adequate temporary or permanent slope conveyances to convey any concentrated flows down cut and fill slopes, consistent with the approved revised ESC Plan, 9 VAC 25-840-40(8), and the specifications in the Virginia Erosion and Sediment Control Handbook, Third Edition.

5. **DEQ Contact**

Unless otherwise specified in this Order, JLE shall submit all requirements of Appendix A of this Order to:

Carla Pool
Stormwater Enforcement Manager
VA DEQ – Central Office
629 East Main Street
Richmond, Virginia 23219
(804) 698-4150
Carla.Pool@deq.virginia.gov